IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/11/2003

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRL OP. No.1005 of 2002
CRL OP. NOS. 1006 to 1009 of 2002
and
Crl.M.P.Nos.550 to 554 of 2002

G.Udayakumar ... Petitioner

-Vs-

State of Tamil Nadu,
rep. by Dr.G.Aldurai,
Assistant Medical Officer
(Plantations),
Udagamandalam,
Nilgiris. ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : M/s. Ram and Ram.

For respondents : Mr.A.N.Thambidurai,
Govt.Advocate(Crl.side).

:COMMON ORDER

The petitioner who is the accused in S.T.R.Nos.5349, 5350, 5351, 53 52 sand 5353 of 2000, on the file of the Judicial Magistrate, Coonoor, has filed the above Criminal Original Petitions, praying to quash the said proceedings, on the ground that as per the provisions of the Tamil Nadu Plantation Labour Act, 1951 and Tamil Nadu Plantation Labour Rules, 1955, every employer of plantations which employ 1000 or more workers shall provide the medical facilities with own garden hospital, plantations employing more than 200 workers but less then 1000 workers shall provide the medical facilities with combined garden hospital and own dispensary, plantations employing 200 or less workers shall provide the medical facilities with dispensary either individually or in groups with necessary equipments and arrangements for visiting doctors and the employers shall ensure that the doctor visits the dispensary at least thrice a week; that each garden hospital shall be under a qualified medical practitioner assisted by at least one

trained nurse, one trained maternity assistant, a qualified pharmacist, one man and one woman Nursing Orderly, one toti and one sweeper; that the services of the staff shall be readily available during all hours, provided that in the case of doctors, nurses, maternity assistants and pharmacists employed in plantation at the commencement of these rules, the Chief Inspector of Plantations may in consultation with the Director of Medical Services grant exemption from possessing the qualifications prescribed for them; that as far as the petitioner herein is concerned, he is named as an employer of Billimalai Estates, (five estates, in all) which have workers, all put together, far less than 200, and hence, as per the rules it requires to have only a dispensary, that too, either individually or in groups; that the only obligation is that there should be a visiting doctor, who visits the dispensary thrice a week; that in addition to rule, the Government of Tamil Nadu had issued a notification, which requires that a qualified nurse or pharmacist is also required to be appointed in the dispensary; that as noticed in the Notification, the petitioner's plantation has a Staff Nurse and a visiting Medical Officer who visits the dispensary thrice a week; that on the other hand the respondent/complainant without adverting to the facts that the plantation of the petitioner's are covered by the Classification of Rule 21(1), proceeded to presume that the employer has violated the provisions of Rule 21(2) of Tamil Nadu Plantation Labour Rules; that the plantation in which the petitioner is an employer has only 43 workers; that in the absence of basic material to show the need to have a Garden Hospital or a combined Garden Hospital, the allegation against the petitioner is without substance and hence he would pray to quash the said proceedings.

2. One more ground raised on the part of the petitioner is that under Section 39 of Chapter VII of the Tamil Nadu Plantation Labour Act, the complaint should have been preferred by the Chief Inspector or with the previous sanction, in writing, of the Chief Inspector of Plantations, but the present prosecution has been instituted at the behest of the Chief Inspector, before according sanction to prosecute the petitioner; that the Chief Inspector of Plantations has not identified the basic requirements of the Rules alleged to have been violated by the petitioner/employer; that without adverting to the basic facts and not looking into the Government Order and without considering the approved medical scheme applicable to the Billimalai Estate, the sanction had been accorded; that the sanctioning authority had not applied his mind before according his sanction and hence, the sanction accorded and prosecution initiated have not only caused incurable prejudice to the petitioner, but also against the provisions of the Act and hence the above proceedings are liable to be quashed.

3. Heard the learned counsel for the petitioner and the learned Government Advocate on the (Crl.side) appearing on behalf of the respondent.

4. During arguments, learned counsel appearing on behalf of the petitioner would pose a question to the effect that whether the Section 10(2) of the Tamil Nadu Plantation Labour Act and Rules would apply to the facts of the case, is the point for determination; that if there are more than 1000 workers, they should have Garden Hospital; that if the workers are less than 1000 but more than 200 they must have a dispensary and if the workers are less

than 200, a dispensary either individually or in group with accessories a nd equipments must be maintained; that so far as the petitioner estate is concerned, there are only one or two workers that is below the minimum required strength for having the above facilities; that the sanctioning authority should have looked into the show cause notice issued by the Assistant Medical Officer, Garden Division says that no Pharmacist has been appointed in the estate and therefore, it violated the provisions of the Act; that the requirement of Pharmacist for the petitioner estate does not arise regarding the facts of the case; that Section 39 of the Act contemplates sanctioning by the Chief Inspector, but even though sanction has been obtained in the instant case, it says that they have to concede the notifications whereas the sanction has been accorded without application of mind and it is a fit case that the prosecution cannot be maintained. On such arguments the learned counsel would seek to quash the above proceedings initiated by the prosecution.

5. In reply, the learned counsel appearing on behalf of the respondent would submit that the case in hand comes under category No.III; that the nurses are unqualified hands; that the Pharmacist is a must and necessary as per Rule 21(b) column (2); that a doctor has to visit the clinic weekly twice, but if they want to be exempted from affording such facility, in such event they must get permission from the Chief Inspector of Plantations. On such grounds the learned counsel would seek dismissal of the above Criminal Original Petitions.

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the respondent as well, what could be assessed by this Court is that the above Criminal Original Petitions have been filed by the petitioner who is the accused in the case registered in S.T.R. Nos.5349 to 5353 of 2000 respectively seeking to quash the proceedings initiated by the respondent/complainant for the commission of offences punishable under Section 10(1) r/w Rule 21(2) of the Tamil Nadu Plantation Labour Act and Rules pending on the file of the Court of Judicial Magistrate, Coonoor.

7. The case of the prosecution is that the petitioner is an employer as defined under Section 2(e) of the Plantation Labour Act for plantation in Billimalai Estates; that the plantation was inspected by the complainant on 26.3.2000 at about 1.45 p.m.; that a Pharmacist as well as the assistants as required under Section 10 r/w 21(2) of the Plantation Labour Act and Tamil Nadu Plantation Labour Rules were not available; that hence, on 28.6.2000 a show cause notice was issued to the employer, the petitioner herein enclosing with Annexure □A□; that thereafter on 13.12.2000 the prosecution obtained previous sanction from the Chief Inspector of Plantations in Annexure □C□ and the complaint was filed against the petitioner for the offence punishable under Section 10(1) r/w 21(2) of the Tamil Nadu Plantation Act and Rules for the lapses noted during inspection.

8. On the part of the petitioner/accused, he would come forward to plead that the Billimalai Estate group had only one or two workers and therefore, it could not be brought under the purview of the Act and Rules and

therefore, it requested the Government to approve the scheme for its dispensary to comply with the requirement of the Rule and law; that obliging the request, the Government passes G.O.Ms.No.2718 dated 24.12.1986; that in all the five managements/estates put together have employed one or two workers only and therefore, they maintained a group coverable dispensary with a staff nurse and a visiting Medical Officer to visit the dispensary thrice a week; that while so, entire proceedings initiated by the prosecution is under misconception of law and abuse of the process of the Court and hence the proceedings become liable to be quashed.

9. A close study had with the materials placed on record as above, would only reveal that the case of the petitioner entirely rests on facts and it is up to the trial Court to go into all these factual position of the case by examining the witnesses and verifying documents marked and no legality has been questioned so as to afford jurisdiction for this Court to interfere with and therefore, in cases of such nature, it is always desirable for a thorough trial to be held into the facts and circumstances of the case with due opportunity for the parties to be heard and therefore, it is not up to this Court to cause its interference, particularly when no legal infirmity or inconsistency has occurred nor any violation of natural justice has taken place which have been complained on the part of the petitioner and therefore, in these circumstances the only conclusion that this Court could arrive at is to dismiss all the above Criminal Original Petitions and hence the following order:

In result,
(i) all the above Criminal Original Petitions 1005 to 1009 of 2002 do not merit acceptance and they become only liable to be dismissed and are dismissed accordingly;
(ii) consequently, Crl.M.P.Nos. 550 to 554 of 2002 are also dismissed;
(iii) however, the trial Court is directed to expedite the trial procedure so as to deliver the judgment on merits and in accordance with law in a time bound manner.

Index: Yes
Internet: Yes

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To

The Judicial Magistrate, Coonoor.

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